TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 271.

SIDNEY A. STOCKDALE, COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

THE VALLETTE DRY-DOCK COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 27, 1872.

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INDEX.

	Original.	Print.
Petition	1	1
Affidavit	3	1
Certificate of counsel	3	2
Order	4	2
Writ of certiorari	5	2
Marshal's return	7	3
Record from fourth district court	7	3
Answer	13	5
Statement of facts	15	5
Order: Continuance	19	7
Submission of cause	20	7
Judgment	21	7
Clerk's certificate	23	8
Writ of error	24	8
Citation	25	9

1 UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

VALLETTE DRY-DOCK COMPANY *vs.* SIDNEY A. STOCKDALE. } No. 6588. United States circuit court.

Petition, affidavit, and order for writ of certiorari.—Filed January 9, 1872.

To the hon. the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of S. A. Stockdale of New Orleans, Louisiana, with respect, shows: That he is an officer of the United States, to wit, collector of internal revenue for the first collection district of Louisiana, duly appointed and acting under authority of an act entitled "An act to provide internal revenue to support the Government, to pay in-
2 terest on the public debt, and for other purposes," passed 30th June, 1864, and of acts in addition thereto and amendatory thereof; that the following entitled civil suit has been commenced against him by the plaintiff therein named, in the fourth district court for the parish of Orleans, a court of the State of Louisiana, holding sessions in the city of New Orleans, viz:

No. 30096. Vallette Dry-Dock Comp., vs. S. A. Stockdale.

That process of citation has been served upon him within this district in said suit, but no trial of said suit has been had; that the said suit is instituted against petitioner for the purpose of recovering from him the amount of money in the petition in said suit set forth, and which is alleged to have been illegally assessed against and collected from the said plaintiff for internal-revenue taxes on dividends and surplus profits by said plaintiff made and declared for and during the period therein mentioned.

Petitioner prays that a writ of certiorari may be issued to the
3 said fourth district court for the parish of Orleans requiring said court to send to this hon. court the records and proceedings in the cause therein named.

(Signed) J. R. BECKWITH,
U. S. Att'y.

Affidavit.

S. A. Stockdale, being sworn, says all the allegations in the foregoing petition are true.

(Signed) S. A. STOCKDALE.

Sworn to and subscribed before me.
January 9th, 1872.

(Signed) F. B. VINOT,
D'y Clerk.

Certificate of counsel.

I certify that, as counsel for petitioner herein, I have examined the proceedings against him in the above-entitled case, and carefully enquired into all the matters set forth in his petition and believe the same to be true.

(Signed) J. R. BECKWITH.

4 *Order.*

Let a writ of certiorari issue in this case as prayed for and according to law.

January 9, 1872.

(Signed) E. H. DURELL, *Judge.*

VALLETTE DRY-DOCK COMPANY *vs.* S. A. STOCKDALE. } No. 6588. United States circuit court.

Writ of certiorari.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

Circuit court of the United States for the fifth circuit and district of Louisiana.

The President of the United States of America to the honorable
5 the fourth district court for the parish of Orleans, greeting:

Because it has been represented to us, in our said court, that a cause has been lately instituted and now is pending in said court, wherein the Vallette Dry-Dock Company is plaintiff, and Sidney A. Stockdale, an officer of the United States, to wit, collector of internal revenue for the first collection district of Louisiana, is defendant, said cause being represented to us as being No. 30096 of the docket of said court; and that the said S. A. Stockdale has been served with process therein issued; and because the said S. A. Stockdale has this day filed in our said court his petition, duly verified and certified as required by law, wherein he has complained that the said suit was, and is, instituted against him, so being such officer as aforesaid, for and on account of an act done by him as such officer as aforesaid, under color of his said office administering the revenue laws of the United States, and has, in
6 due form of law prayed of us that said suit be entered on the docket of our said court, and that the said cause be hereafter proceeded in all respects as if the said cause had been originally commenced in our said court; and we, being willing that the same shall be done, and having ordered the said cause to be entered on the docket of our said court where the said cause is now so docketed:

We, therefore, command you that you do forthwith certify to us, in our said court, a full record of all the proceedings had and of record in your said court, that said cause may be proceeded in in our said court as by the statutes of the said United States provided and required.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 9th day of January, A. D. 1872.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

By F. B. VINOT, *D'y Clerk.*

7 *Marshal's return.*

Received January 10, 1872, by the U. S. marshal. On the eleventh day of same month and year served a copy of within writ of certiorari on the honorable the fourth district court named herein by handing the same to Paul E. Theard, the judge of said court.

New Orleans, January 10, 1872.

(Signed) S. W. REED,
D'y U. S. Marshal.

No. 6588. United States circuit court.

Record from fourth dist. court.—Filed January 12, 1872.

Fourth district court, parish of Orleans No. 30096.

VALLETTE DRY-DOCK COMPANY
vs.
S. A. STOCKDALE.

Petition.—Filed January 4, '72.

8 VALLETTE DRY-DOCK COMPANY
vs.
SIDNEY A. STOCKDALE.

To the honorable the fourth court for the parish of Orleans, State of Louisiana:

The petition of the Vallette Dry-Dock Company, incorporated under the laws of Louisiana, and domiciled in the city of New Orleans, in said State, respectfully shows that Sidney A. Stockdale, residing at the same place, is indebted unto your petitioner in the sum of ($595.00) five hundred and ninety-five dollars, with interest thereon at the rate of five per cent. per annum, from the twenty-sixth day of March, A. D. 1870, until paid; for this, to wit:

That, on or about the fourteenth day of January, A. D. 1870, your petitioner declared a dividend amounting to the sum of nine thousand and nine hundred dollars, and added the further sum of two thou-
9 sand dollars to its surplus or contingent fund, which dividend was payable on and after the first day of February, 1870.

And afterwards, to wit, on or about the twenty-sixth day of March, 1870, said Sidney A. Stockdale, defendant, being collector of United States internal revenue in and for the first collection district of the State of Louisiana, did, then and there, unlawfully and wrongfully, demand from your petitioner the sum of five hundred and ninty-five dollars, as an alleged tax which he claimed was due to the United States by reason of an assessment by B. F. Joubert, assessor of United States internal revenue for said district, of five per cent. upon said dividend and surplus profits of your petitioner, which demand was accompanied by a threat of seizure and sale of petitioner's property, for the purpose of collecting said alleged tax with penalties, if the same were not paid within the delay specified; wherefore your petitioner paid the sum
10 aforesaid to said defendant, the twenty-sixth day of March, 1870.

Your petitioner avers that said assessment and collection of said sum of money alleged to be a tax, was wholly without warrant or authority in law.

Your petitioner avers that it was without authority to with'old said alleged tax from said dividend, and therefore paid the same in full to the persons entitled thereto, prior to said alleged tax being demanded.

Your petitioner avers that, "according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof," it appealed to the Commissioner of Internal Revenue for, and demanded the refunding and return to it of, said sum of money, so as aforesaid wrongfully and illegally demanded and collected from your petitioner by said defendant; and said Commissioner,
11 has failed and neglected to decide upon said appeal, and more than six months and less than one year has elapsed since the date of said appeal.

Wherefore your petitioner prays that said defendant, Sidney A. Stockdale, be cited to answer this demand, and that, after due proceedings had, he be condemned to pay your petitioner the sum of five hundred and ninety-five dollars, with legal interest, from the twenty-sixth day of March, 1870, until paid, and costs of suit.

And petitioner prays for general relief.

(Signed) CASE AND ROUSE,
Attorneys for Petitioner.

No. 6588. United States circuit court.

Citation.—Filed January 12, 1872.

Fourth district court for the parish of Orleans.

VALLETTE DRY-DOCK COMPANY
vs.
S. A. STOCKDALE. } No. 30096.

Case and Rouse, attorneys.

12 Copy of petition and citation inside to be served on Sidney A. Stockdale.

Filed January 6, 1872.

(Signed) WM H. CARSON,
D'y Clerk.

Citation.

State of Louisiana, fourth district court, for the parish of Orleans, in the city of New Orleans.

VALLETTE DRY-DOCK COMPANY
vs.
S. A. STOCKDALE. } No. 30096.

M. SIDNEY A. STOCKDALE, *New Orleans:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court for the parish of Orleans, in ten days after the service hereof.

13 Witness the honorable Paul E. Theard, judge of the said court, the fourth day of January, in the year of our Lord 1872.

[SEAL.] (Signed) WM H. CARSON,
Deputy Clerk.

Court-house, Jackson Square, corner Chartres and St. Anthony's alley, up stairs.

Sheriff's return.

Received January fourth, 1872, and, on the fifth of January, 1872, served a copy of the within citation and accompanying petition on S. A. Stockdale, in person.

(Signed) A. LABAT,
D'y Sheriff.

United States circuit court.

VALETTE DRY-DOCK COMPANY
vs.
S. A. STOCKDALE. } No. 6588.

Answer.—Filed April 15, 1872.

14 Circuit court of the United States, district of Louisiana.

THE VALLETTE DRY-DOCK COMPANY
vs.
SIDNEY A. STOCKDALE, COLLECTOR OF INTERNAL REVENUE. } No. 6588.

And now comes the defendant, by J. R. Beckwith, United States attorney, and, for answer to plaintiff's petition hence, denies all and singular the allegations therein contained, and prays ju'gement against said plaintiff, with costs and general relief.

(Signed) J. R. BECKWITH,
U. S. Att'y, for Defendant.

United States circuit court.

VALLETTE DRY-DOCK COMPANY
vs.
STOCKDALE. } No. 6588.

Statement of facts.—Filed April 15, 1872.

15 United States circuit court, fifth circuit and district of Louisiana.

THE VALLETTE DRY-DOCK COMPANY
vs.
SIDNEY A. STOCKDALE. } No. 6588.

STATEMENT OF FACTS.

And, afterwards, on the fifteenth day of April, 1872, of the November term A. D. 1871, of said court, in open court, came as well the said plaintiff, by Case & House, its attorneys, and the said defendant, by Hon. J. R. Beckwith, United States attorney, and, having waived a trial by jury, agreed upon and submitted to the court the following statement of facts involved in this case, that is to say:

1st. That plaintiff is a body corporate, duly created under the laws of

the State of Louisiana, domiciled in said State, and has, since the first day of January, 1869, carried on the business of docking and re-
16 pairing vessels, at the city of New Orleans.

2d. That, on the foureenth day of January, 1870, said corporation plaintiff declared a dividend of the earnings which had accrued to said corporation from the first day of January, 1869 to the thirty-first day of December, 1869, amounting to the gross sum of nine thousand nine hundred dollars, and at the same time added to its surplus fund the sum of two thousand dollars, undivided earnings, for the same period, which dividend was payable and paid to the share-holders of said corporation on and after the first day of February, 1870, without any deduction being made therefrom for account of any tax.

3d. That, on the fifteenth day of February, 1870, and upon demand of B. A. Joubert, assessor of internal revenue for the first collection district of Louisiana, the plaintiff made a return to him of said
17 dividend, and surplus profit aforesaid, at the time denying its liability to make any such return or to pay any tax.

4th. That said assessor of internal revenue assessed against said plaintiff an alleged internal-revenue tax upon said dividend and surplus profit at the rate five per centum, said assessment amounting to the gross sum of five hundred and ninety-five dollars, and returned the same upon his monthly list of assessments for the month of February, 1870, to said defendant, collector of internal revenue as aforesaid, for collection.

5th. That defendant, collector as aforesaid, demanded payment of the sum so as aforesaid assessed, from the said plaintiff, and notified the plaintiff that, if the same are not paid, that he would distrain upon and sell plaintiff's property to make said tax. And thereupon said plaintiff, on the second day of April, 1870, paid to said defendant, collector as aforesaid, the sum demanded as such tax, to wit, the sum of five hundred and ninety-five dollars.

18 6th. That said plaintiff, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, then in force, appealed to the Commissioner of Internal Revenue, and demanded the refunding and return to plaintiff of said sum of five hundred and ninety-five dollars, so as aforesaid paid to said defendant; that said commissioner has failed and neglected to decide upon said appeal; that more than six months, and less than one year had elapsed from the time said appeal was presented to said Commissioner, when this action was commenced.

7th. That said sum of money paid by plaintiff to defendant, collector as aforesaid, has, in the due and regular course of business in the office of said defendant, been paid into the Treasury of the United States.

And having so agreed upon said fact as herein stated, said plaintiff and said defendant, by their said respective attorneys, did, then
19 and there, respectively, pray the judgment of the court in the premises.

(Signed) CASE & ROUSE,
Atty's for Pl'ff.

(Signed) J. R. BECKWITH,
U. S. Att'y, for Defend't.

No. 6588. United States circuit court.

Order: Continuance.—Extract from the minutes. November Term, 1871.

NEW ORLEANS, *Monday, April* 15, 1872.

Court met pursuant to adjournment. Present, Honorable E. H. Durell, district judge.

VALLETTE DRY-DOCK COMPANY
vs.
S. A. STOCKDALE. } No. 6588.

20 The counsel in the above case having filed statement of facts, it was ordered that the matter be argued on to-morrow, at 11 a. m.

No. 6588. United States circuit court.

Submission of cause.—Extracts from the minutes of April 16, 1872.

VALLETTE DRY-DOCK COMPANY
vs.
S. A. STOCKDALE. } No. 6588.

The above cause came up for trial before the court, the parties having, in writing, waived the jury.

And, after hearing the argument of counsel on both sides, the court took time to advise.

21 *Judgment, from judgment-book, May 1st*, 1872.

Circuit court of the United States, fifth circuit and district of Louisiana.
April term, 1872.

NEW ORLEANS, *Wednesday, May* 1, 1872.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

VALLETTE DRY-DOCK COMPANY
vs.
S. A. STOCKDALE. } No. 6588.

For the reasons assigned in the written opinion of the court, this day delivered and on file, in the case of the Home Mutual Insurance Company vs. this defendant, No. 6525 of the docket, it is ordered, adjudged, & decreed that the plaintiff, The Vallette Dry-Dock Company, do recover from the defendant, Sidney A. Stockdale, the sum of five hundred and ninety-five dollars, with 5% interest from twenty-sixth March,
22 1870, till paid, and costs of suit.

And it appearing that the defendant is collector of internal revenue for the first collection district of Louisiana, and that this action was brought against him, in his official character and capacity, for money paid to him, and by him into the Treasury of the United States, in the performance of his official duty as such collector of internal revenue, and that he had reasonable and probable cause for collecting from said plaintiff the said money now recovered back from him by the aforesaid judgment:

It is, therefore, further ordered that no execution or other writ, of the enforcement of the judgment, issue against the said defendant,

but that the same be provided for and paid out of the proper appropriation from the Treasury, as provided by law in such cases.

Judgment rendered May 1st, 1872.

Judgment signed May 6th, 1872.

(Signed) E. H. DURELL, *Judge.*

23 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 22 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The Vallette Dry-Dock Company vs. Sidney A. Stockdale, No. 6588 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18th day of November, A. D. 1872.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 18th day of November, A. D. 1872.

E. H. DURELL, *Judge.*

24 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between The Vallette Dry-Dock Company, plaintiff, and Sidney A. Stockdale, collector of United States internal revenue in & for the first collection district of Louisiana, is defendant, a manifest error hath happened, to the great damage of the said Sidney A. Stockdale, defendant, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said

Supreme Court of the United States, this 29th day of April, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 6588. Sidney A. Stockdale, plaintiff in error, versus The Vallette Dry-Dock Company, def't in error. Writ of error. Filed May 13th, 1872, F. A. Woolfley, clerk.

25 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to The Vallette Dry-Dock Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Sidney A. Stockdale, collector of United States internal revenue in & for the first collection district of Louisiana, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 13th day of May, in the year of our Lord one thousand eight hundred and seventy-two.

E. H. DURELL, *Judge.*

26 (Indorsed:) United States circuit court. No. 6588. Sidney A. Stockdale, plaintiff in error, vs. The Vallette Dry-Dock Company, defendant in error. Citation.

Marshal's return.

Received May 14, '72, by the U. S. marshal, and, on the same day, month, and year, served a copy of this citation on the Vallette Dry-Dock Company, by handing the same to O. F. Vallette, the president of said company, in person, at this city.

New Orleans, June 1st, 1872.

C. R. STEELE,
D'y U. S. Marshal.

On this 1st day of June, 1872, personally appeared me, the subscriber, S. W. Reed, & makes oath that he delivered a true copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 271. Sidney A. Stockdale, collector of internal revenue, plaintiff in error, vs. The Vallette Dry-Dock Company. Louisiana C. C. U. S. Filed 27th November, 1872.

Supreme Court of United States.

No. 271.

SIDNEY A. STOCKDALE, COLLECTOR OF INTERNAL REVENUE,
Plaintiff in Error,

VERSUS

THE VALLETTE DRY DOCK COMPANY

In Error to the Circuit Court of the United States for the District of Louisiana.

Brief for Defendant in Error.

This suit was brought by the defendant in error—plaintiff below, to recover an amount paid to plaintiff in error, as a tax upon a dividend, declared and paid, by the Dry Dock Company, to its stockholders, and upon an addition to its surplus fund.

The judgment of the Circuit Court being in favor of the Company, we affirm its correctness for the reason:

That no law of the United States imposed any tax upon a Dry Dock Company.

This is a proposition that will not admit of argument. The provisions of the internal revenue laws imposing

taxes upon the dividends of corporations, expressly name the corporations which are required to pay such tax.

13 *U. S. Statutes*, 283, 284; 14 *Ibid.* 138.

Dry Dock Companies are not among the enumerated corporations. "*Expressio unius est exclusio alterius.*"

The imposition of the tax upon the Company being without authority of law, it could not withhold the same from its stockholders, as the corporations enumerated in the act were authorized to do.

The judgment should be affirmed.

Respectfully submitted.

J. D. ROUSE,
Attorney for Defendant in Error.

CHARLES CASE,
Counsel.